

BUSINESS & LABOREXHIBIT NO. 1
DATE 3-21-11
BILL NO. HB 408, HB 464,
HB 275

Dear Joe,

I am writing to you as a constituent, a Montana doctor, past president of the Montana Medical Association, etc. (I could go on but probably not necessary). As you know, many of the tort reform bills proposed by Montana physicians will be heard in your committee next week. I wish that I could be there to personally testify but patient care responsibilities prevent me from doing so. I therefore hope that you will carefully consider the following and use it as my considered opinion and, I think, the opinion of most physicians in Montana during your deliberations. Please feel free to call me at any time if you have any questions or need any additional information. You and I have talked before on a number of issues and can do so again if you see fit.

The "tort reform package" that the MMA has proposed and sent to the legislature is just that: a package. It is import that all of these bills be enacted into law in order to protect Montana physicians from inappropriate lawsuits and payments to plaintiffs that are out of proportion to their actual loss. The current climate leads to much in the way of so-called defensive medicine whereby doctors perform and/or order tests that may really be unnecessary but that they feel are important to prevent them from being engaged in a lawsuit should something be overlooked. If you do not believe this, consider the following:

In the United States there is a recommendation that all men be screened for prostate cancer beginning at age 50 with a PSA blood test and a prostate exam. An elevated PSA or an abnormal prostate exam might prompt a recommendation for prostate biopsy. Actually, most men with abnormalities in either of the above do not have prostate cancer. In addition, prostate cancer is a slowly progressive problem and not all men with prostate cancer require aggressive treatment. This is particularly true in older men or men with significant other health problems.

I see untold numbers of men for evaluation of an elevated PSA (usually with a prostate that feels normal). In years past, I tried to adopt a practical approach to this evaluation. I told many older men or men with significant medical problems that might shorten their life, that, because of the slow nature of prostate cancer, it was reasonable to forego prostate biopsy and simply follow the PSA and proceed to biopsy if the PSA continued to rise. A few years ago I recommended this approach for a man in his 70's and was subsequently sued when he turned out to have prostate cancer a year or so later. It made no difference in treatment or final outcome but, because I delayed his diagnosis, I was deemed to be a bad doctor. Since that time, every man who comes to me with an elevated PSA receives a recommendation for a prostate biopsy. I did 300+ such biopsies last year and found about 50 prostate cancers (I think this is typical for urologists around the country). I continue to counsel men regarding the need for a biopsy and they certainly can refuse but, if they do so, it is now documented that they did so against medical advice.

So what is the big deal? After all, we are talking about a few guys who get their prostate biopsied. Well, let me tell you that the cost of doing these biopsies and the cost to the

patient in terms of anxiety, etc. is significant. A "typical" prostate biopsy costs around \$700.00. The pathologist who interprets the biopsy specimens charges around \$100.00 to \$200.00 per sample. We typically take 10 to 12 samples resulting in a charge to the patient of \$1,000.00 to \$2,400.00. This is not insignificant.

There are other examples of similar defensive medicine issues that are probably equally significant. All of these things serve to simply increase the cost of medical care, the anguish to patients and do not increase the quality of care by any means. Until doctors in Montana and the United States achieve a more reasonable status regarding malpractice actions, defensive medicine is here to stay and will continue to unnecessarily increase the cost of health care in Montana and across the nation. I therefore, strongly urge you and your committee to support the tort reform bills that have been proposed this year.

I apologize for the length of this letter but I also hope that it is helpful to you in your deliberations. Please let me know if you wish to talk about this or if I can provide anything additional. Sorry that I cannot come to personally testify.

J. Bruce Robertson, MD
Bozeman Deaconess Urological Associates
935 Highland Blvd. #2160
Bozeman MT 59715
406-556-5300
brobertson@bresnan.net

Sun, March 20, 2011 5:47:25 PM

Tort reform

From: Jay S. Erickson <jerick@u.washington.edu>

Add to Contacts

To: "joebalyeat@yahoo.com" <joebalyeat@yahoo.com>

Sen. Balyeat,

I know that you are hearing a package of medical liability issues in the next few day in your Business Labor and Economic Affairs Committee. You will be hearing on Monday HB 275, HB 408 and HB 464. On Tuesday you will hear testimony on HB 405 and HB 416. I am a Family Physician from Whitefish Montana and current President of the Montana Medical Association. I am completing 21 years of practice in this community and I would like to urge the passage of this package of liability reform proposals. The issue of defensive medicine and the costs associated with this reality are a part of most every visit in my office. Significant tort reform which the Accountable Care Act did not include is essential to lowering the rising costs of health care.

Health care reform requires that we create a system of value driven care which must include reducing the high costs of medical malpractice insurance. I stopped delivering babies 7 years ago in part because of the high cost of medical malpractice insurance. We currently have difficulty recruiting specialists in certain areas because of our state's current medical liability climate. We also have a declining number of insurance carriers willing to write this form of insurance because of the current medical liability climate.

Again, I urge your support of the passage of this package of medical liability reform proposals. I think this will be a key component in reducing health care costs in Montana and helping to provide quality affordable healthcare for Montanans.

Regards,

Jay S. Erickson M.D.
Whitefish, MT